

SENTENCING COMMISSION MINUTES

Committee		Utah Sentencing Commission – Annual Meeting
Date	Wednesday, April 6, 2016	
Time	8 a.m. – 4 p.m.	
Location	Utah State Capitol, Senate Caucus Room	
Members Present	Patrick Anderson, Judge Mark Andrus, Chyleen Arbon, Craig Barlow, Shima Baughman, Paul Boyden, Susan Burke, Darin Carver, Judge Michele Christiansen, Rollin Cook, Senator Gene Davis, Al Emery, Scott Garrett, Ron Gordon, Rachelle Hill, Rep. Brian King, Judge Julie Lund, Richard Mauro, Rep. Marc Roberts, Peter Stirba, Senator Dan Thatcher, Pam Vickrey	
Members Excused	Chief Craig Black, Judge Thomas Low, Sheriff James Tracy, Judge Vernice Trease, Christina Zidow	
Staff & Visitors	Staff: Mary Lou Emerson, Jo Lynn Kruse, Holly Langton, Cuong Nguyen, Sofia Nystrom, Jennifer Valencia, David Walsh, Doreen Weyland Visitors: Dan Blanchard, Nathan Brady, Anna Brower, Mike Haddon, Raechel Lizon, Mariah Noble, Christian Sarver, Rick Schwermer	
Agenda Item	Welcome and Approval of Minutes, Review of by-laws	
Notes	<p>Peter Stirba called the meeting to order and welcomed everyone.</p> <p>Senator Thatcher made a motion to approve the January minutes. Craig Barlow seconded the motion which passed unanimously.</p> <p>Peter Stirba drew our attention to the by-laws, which were approved in June 2012. Patrick Anderson made the motion to reaffirm the bylaws. Rich Mauro seconded the motion, which passed unanimously.</p>	
Agenda Item	Updates (tape part 1)	
Notes	<p>Legislative Session – Jennifer noted that the Sentencing Commission had four priority bills. Three passed: HB404 – Crime Victim Restitution Amendments, SB187 – Reclassification of Misdemeanors, and SB206- Cohabitant Abuse Procedures Act Revisions. HB487 - Criminal Code and Criminal Procedure Amendments did not pass.</p> <p>House Bills that the Sentencing Commission supported: HB16 – Offender Registry Amendments, HB105 – Human Trafficking Revisions, HB179 S01 – Consensual Sexual Activity of Minor, HB206 S01 – Human Trafficking Safe Harbor Amendments, HB259 S01 – Substance Abuse Treatment Fraud Amendments, HB260 – Sexual Exploitation of a Minor Amendments, HB342 – Substance Abuse Programs Amendments, HB344 S01 – Move Over Amendments, and HB405 S02 Juvenile Sentencing Amendments.</p> <p>Senate Bills that the Sentencing Commission supported: SB82 S03 – Child Welfare Modifications, SB106 S01 Assault Offense Amendments, SB124 – Gang Enhancement Provision Amendments, SB158 – Juvenile Court and Child Abuse Amendments, and SJR 10 – Joint Resolution on Education for Law Enforcement Professionals.</p> <p>The 2016 Legislative Session yielded two new 2nd degree felonies, six new 3rd degree felonies, three new Class A Misdemeanors, four new Class B Misdemeanors, four new Class C Misdemeanors, forty one new infractions, nine new fines or fees and one new anticipated prison admission per year. The anticipated fiscal impact is \$98,685,000.</p> <p>Juvenile Justice Subcommittee – (tape part 1, 57:30) Pam Vickrey briefly discussed juvenile brain development. She also discussed SB45 – Compulsory</p>	

Education Revisions, which did not pass the House but is an issue the Juvenile Justice Subcommittee discussed, but did not reach consensus. This bill would have amended penalties for a parent of a truant school-age child; amended requirements related to excusing a home-schooled student; amended provisions related to a violation of a court order by a habitual truant; and make technical and conforming changes. Detention does not address the underlying causes of status-offending behavior and may even exacerbate those causes. Finding solutions remains the concern.

Pam presented recommendations that juvenile status offenders should be viewed and treated differently by the juvenile justice system. Pam reviewed 10 national recommendations for states to prevent a juvenile record from following a juvenile offender into adulthood, and confidentiality of court records and Utah's status in comparison to other states.

Pam further explained the basis of HB405, which prohibits sentencing an individual under 18 years of age to life in prison without parole. This law brings to 16 the number of states that ban life-without-parole sentences for people who were younger than 18 at the time of their crimes.

Pam thanked Darin Carver, Krista Airam, Dawn-Marie Rubio, Susan Burke and Debbie Whitlock for their extensive and substantial work on the Juvenile Guidelines.

Darin presented several slides with data obtained from JAOC: Delinquency History Score Data by Risk Level data, the tentative matrix of Presenting Offense Columns, and Percentages of Youth by Row and Risk Level on the Draft Juvenile Matrix. The goal of revising the matrix is to provide a more validated approach in making a better informed recommendation to the court. The new matrix should enable a more objective approach rather than a subjective one.

The Commission reviewed a final draft of Aggravating and Mitigating Factors for youth. There is still more work to be done. Ron Gordon mentioned that PEW is close to accepting to help Utah revamp the Juvenile Justice System similar to the help Utah received for the Adult Justice System. The Commission decided to wait on a vote of approval on the draft, knowing that PEW is sure to review it if they agree to help.

Department of Corrections – (tape part 1, 2:19)

Mike Haddon gave an overview of prison population growth. Admissions for (new crimes and violations) were 2,803 during 2015. Although nearly split in half in 2015, more admissions were for condition violations. The average release length of stay for the inmate population was 2.7 years. This is the highest average over the past 30 years of being tracked.

Length of stay for 1st degree felonies and all degrees of sex offenders has changed the most over the past 30 years. For probationers admitted to prison in 2015, there is a nearly even split between admissions for conditions violations and admissions for new crimes. Parolees returned to prison are historically far more likely to be returned for conditions violations than for new crimes.

Board of Pardons & Parole – (tape part 2)

Chyleen Arbon thanked Raechel Lizon for putting the presentation together. Chyleen then reviewed recommendations from the February 2016 Legislative Audit.

The BOP is moving toward evidence –based practices. Many of the recommendations may require multiple years to implement and require ongoing support of partners such as CCJJ. The BOP is focused on permanent system improvements rather than temporary fixes. Additional financial resources will be necessary, including ongoing funding.

Chyleen also discussed implementation of the Justice Reinvestment Initiative at the Board of Pardons, including: New Sentencing Guidelines, Credit for Time Served, Earned Time Program, Incentive and Sanctions Matrix and Earned Compliance Credit.

BOPP has worked to fully implement JRI during the previous year. This process has led to the request for the wording change of 'immediate' to better and more effectively ensure community safety and assist

	offenders. The word "immediate" is hard to define. The Guideline Subcommittee will discuss and assess this issue.
Agenda Item	National Association of Sentencing Commission's Annual Meeting (tape part 3 1:25)
Notes	Jennifer Valencia announced that the Annual National Association of Sentencing Commissions (NASC) Conference will be held at the Little America Hotel in Salt Lake City. The Conference is scheduled for August 7 th – 9 th . Utah will be hosting a reception on Sunday evening at the U of U. Please encourage as much local participation as possible. Utah is also responsible for planning at least one break-out session, maybe more.
Agenda Item	Pre Trial Release Practices Research (tape Part 3)
Notes	<p>Shima Baughman gave a presentation on Pre Trial Release Practices Research. The United States is the only country that has money bail.</p> <p>Shima noted that PEW helped the state of Kentucky with Pre-trial Diversion and is viewed as a success story. Kentucky has a Social Work Pilot Project in which Social Workers are placed at the public defender's offices throughout the state and help treat offender's "root" problems. Kentucky has saved millions of dollars in incarceration costs and court costs.</p> <p>The American Bar Association (ABA) has three major principles for pretrial release standards: Enunciate a policy and presumption favoring release of the accused, Abolishment of compensated sureties for release (bail bondsmen), and Establishment of a comprehensive pretrial release service agency.</p> <p>Pretrial release is a broken system that costs us money every day. There are alternatives that can save money without endangering the public. We will get opposition from bail bondsmen. A more public process to educate on the issue will gain more support. If Senator Hillyard will not run this bill again, Senator Thatcher indicated he will.</p>
Agenda Item	Justice Reinvestment Initiative Implementation Task Force (tape part 3 40:00)
Notes	<p>Doreen Weyland and Sofia Nystrom discussed selected JRI quarterly performance measures. Salt Lake, Weber and Washington counties are hub jails. Cache and Davis counties are doing their own screenings.</p> <p>The next priority was to get a pre-trial instrument and use the PSA court instrument. Next steps include looking to the Crime and Justice Institute or develop an Implementation task force that we put together. Eight grant awards have been made thus far to mostly rural areas. Four items suggested for consideration by Weber County are: Criminal history should have a more graduated point system at the higher end, DUI should be listed as a person crime, a drug specific matrix should be developed and possession of a weapon should be an aggravating factor even if not used in the crime.</p> <p>The JRI task force meets monthly. These items will be discussed at the JRI task force and also by the Guidelines Subcommittee.</p>
Agenda Item	RIM Continuing Research by U of U Criminal Justice Center (part 3 tape 1:10)
Notes	<p>Christian Sarver, Senior Research Analyst from the Utah Criminal Justice Center (UCJC) gave a presentation on <i>Utah's Response and Incentive Matrix: Stakeholder Perceptions</i>. Christian spoke about Risk Reduction, Effects of Risk Needs Responsivity (RNR), Implementation of Evidence Based Practices (EBP), and Five Strategies for Implementation of EBP. Christian also discussed stakeholder perceptions of the RIM Pilot.</p> <p>EBP has been around for a while, but it doesn't mean it is happening. UCJC wants to monitor how implementation is going and provide feedback. Surveys are going out statewide and UCJC will conduct offender interviews. They won't be available until the end of the year or first of next year.</p>
Agenda Item	Public Comment (tape part 3 1:31)
Notes	Public comment was requested and placed on the agenda, but no public comments were made.

Agenda Item	Discussion, Prioritization & Delegation of Items to Subcommittees (tape part 3 1:32)
Notes	<p>The Commission discussed forming a Guidelines Subcommittee to address issues that Doreen and Chyleen brought up. The following volunteered: Chyleen Arbon, Pam Vickrey, Dan Blanchard, Darin Carver, Craig Barlow, Rich Mauro, Judge Trease and Scott Garrett. Peter made the motion to form that subcommittee. Senator Thatcher seconded the motion, which passed unanimously.</p> <p>The Anomalies, Misdemeanor and Juvenile subcommittees are already constituted.</p> <p>The following issues were suggested as potential interim study items: SB 107 – Senator Thatcher asked this subject be put on the June Interim agenda, also Civil Asset Forfeiture. We also need to obtain support from CCJJ and Law Enforcement on Pretrial Release.</p> <p>Chyleen asked for clarification on expungement – perhaps a joint working group with CCJJ and USAAV.</p> <p>Jennifer suggested that due to State v Ainsworth, we should work on addressing the measurable metabolite section of the statute as it was declared unconstitutional under uniform operation of laws. HB475 – Driver License Amendments attempted to address that issue but did not pass.</p> <p>Rich Mauro suggested further efforts on SB189 Death Penalty Bill.</p> <p>Patrick Anderson suggested revisions to the Shoplifting statute. Enhancements are problematic due to the low amount on the third violation which sometimes results in prison commitments for items that are very low in value.</p> <p>Rich Mauro has suggested a number of times that Aggravating and Mitigating Circumstances on the matrix, forms 2 and 4 have not been revised in years. They are really outdated and need to be updated to reflect the changes that have occurred elsewhere in the Guidelines.</p> <p>Judge Christianson and Pam Vickrey mentioned strict liability sex offenses for juveniles were recently addressed in a Utah Court of Appeals decision which went into some detail on brain development. The question is whether the strict liability cut points are based on any research or just an arbitrary number which was picked a long time ago. Is there any basis to retain those age points? Pam suggested maybe we should look at perhaps graduated sanctions based on the similarity in age of the victim and offender.</p> <p>Jennifer indicated that she attended a meeting with Weber County including many representatives on the proposal Doreen explained. They are concerned about distribution offenses due to JRI and that there isn't enough of a graduated approach between possession offenders and distributors. Coordinate with Prosecutors on the Weber County proposal.</p>
Next Meeting	The next meeting will be on June 1, 2016, Utah State Capitol Bldg., Senate Caucus Room

Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ